CERTIFICATE OF LAWFULNESS APPLICATION. STATEMENT.

- Date Issued: January 2019

SITE ADDRESS:
- Ringe Hay Farm, Ringe Hay Farm, Basford, Leek Staffordshire ST13 7ET

APPLICANT:
- Mr. D Pearson.

PROPOSAL:
Certificate Lawfulness application for the future use as:

A) Permanent private dwelling houses (Use Class C3) of three Buildings (The Barn, The Dairy and Granary Cottage) which have had holiday occupancy conditions removed.

B) Domestic curtilage of the associated gardens and parking which were granted permission in 2018.

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1. INTRODUCTION

1.1. This application concerns three buildings at the Farm which have been used for holiday accommodation for several years. These buildings are referred to in this application as the Barn, the Dairy and Granary Cottage. The three buildings are shown on the submitted Location and Site Plans.

1.2. In simple terms, planning permission for the conversion of the Barn and the Dairy to holiday cottages was granted in 2005 and permission was granted for the conversion of Granary Cottage to holiday accommodation in 2011. In 2018 two applications for removal of the holiday occupancy conditions were approved. The latter two applications were made to allow the three buildings converted into holiday lets to enjoy unrestricted use as dwellings.

1.3. Section 73 of the 1990 Act gives an express power to apply for planning permission for the development of land without complying with conditions attached to an earlier permission. Importantly, it only confers power to amend or remove conditions and not to amend any other part of the permission which would include the description of development. It is the case that a decision under Section 73 leaves the original permission intact and unamended: *Powergen UK plc v Leicester City Council (2001) 81 P. & C.R. 5.*

1.4. On the face of it there is a conflict between the original permissions and the removal of condition approvals granted in 2018. The purpose of this application is to clarify the permission. The applicant hopes to put the properties up for sale as individual permanent dwellings. This application has been made following advice from the Council's planning officers in connection with another similar application to remove a holiday occupancy condition.

1.5. No gardens were included in the original approvals in 2005 and 2011. However, the applicant provided gardens and parking as part of the conversion work to holiday accommodation without the benefit of planning permission. Separate retrospective applications to rectify the lack of permission for the gardens and parking were submitted in 2018 and both were approved.

1.6. Details of the original applications and all the four applications in 2018 are set out in Section 2 on the next page.

2. PLANNING HISTORY

2.1 **The original planning permissions** were: -

- **SMD/2005/0864** – *"Conversion of redundant agricultural building to 2 holiday cottages"* at Ringe Hay Farm, Apesford Lane, Staffordshire Moorlands, Bradnop, ST13 7ET.
  This application was approved on 4 September 2008. The cottages mentioned in the description were later named "The Barn" and "The Dairy".

- **SMD/2005/0864** – *"Change of Use from Workshop/Store to Holiday Accommodation*" at Ringe Hay Farm, Basford, Staffordshire Moorlands, Leek, ST13 7ET.
  This application was approved on 7 June 2011. The accommodation mentioned in the description was later named "Granary Cottage".

2.2 **Planning approval for the removal of holiday occupancy conditions on the three buildings** was granted in 2018 as follows: -

- **SMD/2018/0374** – "Removal of conditions 8 & 9 relating to SMD/2005/0864". Approved – 28 September 2018. This permission removed the holiday occupancy conditions on the Barn and the Dairy.

- **SMD/2018/0403** – "Removal of condition 5 of planning permission". SMD/2011/0391". Approved - 05/10/2018. This permission removed the holiday occupancy condition on Granary Cottage.

2.3 **The following planning applications were also approved in 2018**: -

- **SMD/2018/0375**. "The retention of the garden serving two holiday cottages (the Barn and the Dairy) and the sub-division of the land to form two gardens to serve the two cottages". Approved - 28/09/2018.

- **SMD/2018/0404.** "The retention of the garden serving Granary Cottage". Approved - 05/10/2018.

2.4 The result of the 2018 approvals is that the occupancy conditions on the original permissions have been removed and gardens and parking have been approved for each property.

1.1. The Evidence in support of this application consists of: -

Original Planning Permissions for conversion to holiday accommodation

- SMD/2005/0864 – "Conversion of redundant agricultural building to 2 holiday cottages" at Ringe Hay Farm, Apesford Lane, Staffordshire Moorlands, Bradnop, ST13 7ET.
- SMD/2005/0864 – "Change of Use from Workshop/Store to Holiday Accommodation" at Ringe Hay Farm, Basford, Staffordshire Moorlands, Leek, ST13 7ET.

Removal of Conditions

- Application SMD/2018/0374. Removal of conditions 8 & 9 relating to SMD/2005/0864 at Ringe Hay Farm Basford Green Road, Basford Leek.
- Application SMD/2018/0403 – "Removal of condition 5 of planning permission". SMD/2011/0391".

Gardens

- SMD/2018/0375. "The retention of the garden serving two holiday cottages (the Barn and the Dairy) and the sub-division of the land to form two gardens to serve the two cottages". Approved - 28/09/2018.
- SMD/2018/0404. "The retention of the garden serving Granary Cottage". Approved - 05/10/2018.

The above documents are submitted separately with the application.

3. THE CASE IN SUPPORT OF THE APPLICATION

The removal of the occupancy conditions

3.1 The decision notices issued by the Council are slightly unusual in this case. In my previous experience the original planning permission is simply re-issued with a new planning number together with the new/varied or deleted condition(s) which was the subject of the application. The description on the new permission remains the same as the original permission.

3.2 The issuing of new permissions with new descriptions leads to ambiguity and possible uncertainty. The original permissions and 2018 removal of conditions need to be read together and may leave others, when the properties are put up for sale, to question as to whether the properties can actually be used as permanent dwellings. The original permissions still stand complete with occupancy conditions and the original descriptions. On the other hand, the 2018 condition removal permissions do not contain any conditions restricting the use of the occupation of the properties.

3.3 The courts have held that a Council may specify the purpose for which a planning permission was granted on its face (i.e. in the description of the development) and that this then has the effect of authorising only that particular use. However, the description of the planning permission granted is not classed as a condition but as a limitation on the face of the permission. A breach of a limitation, unlike breach of an express condition restricting use, is not in itself a breach of planning control. *Wilson v West Sussex County Council 1963 2 QB 764*.

3.4 The possibility that a limitation imposed by a local planning authority on the grant of planning permission may suffice for the purposes of s.171A(1)(b) (failure to comply with condition or limitation to constitute breach of planning control) has been rejected by the courts.

3.5 *In I'm Your Man Ltd v Secretary of State for the Environment [1999] 4 P.L.R. 1077,* the planning permission was described as being for the use of certain buildings for "sales, exhibitions and leisure activities for a temporary period of seven years." However, no condition was imposed to limit the use to seven years. The High Court did not accept that the wording of the permission imposed a time limitation because this limitation had not been secured by condition.

3.6 The relationship between the principles of a condition and a limitation was also considered by the Court of Appeal in *Winchester City Council v SSCLG [2015] JPL 11844.* In this case the Court of Appeal held that the planning permission permitted change of use to use as a show people's site and not to a generalized residential caravan site but that since there was no occupancy condition then use of the site by occupiers who were not show people was not prohibited.

3.7 The court of Appeal judge (P Sullivan LJ) stated that: -

"……..in the absence of any condition limiting the use of the site to the permitted use, the question in every case will be: has the alleged change of use taken place and, if so, is it a material change of use for planning purposes? If the answer to either of these questions is 'no' there will have been no development, so planning permission will not be required. If the answer to both these questions is 'yes' there will have been development and planning permission will be required."

3.8 With regard to this application when the properties are used as permanent dwellings the answer to the question as to whether a material change of use had occurred would be "no".

3.9 If we apply the principles which can be found in the various cases mentioned above then it seems to me that the position is as follows: -.

- Use of the Properties as dwelling houses as opposed to holiday accommodation is not prohibited by condition and so no breach of planning control will take place which could be used as a basis to take enforcement action. That is the case even though the original planning permission contains a limitation that means that the development is for holiday accommodation only.

- A breach of planning control will only take place if it could be argued that the use of the Properties as individual dwelling houses constitutes a material change of use from their use for the purposes of holiday accommodation.

3.10 It is contended that if the properties were to be used as permanent residences no material change of use would have occurred because: -

- ❖ The original planning permission did not seek to limit the occupation of the Properties to certain months of the year only but rather to limit the maximum stay per person/family etc. to no more than 4 weeks at any one time.

- ❖ There was nothing on the face of the original permission to prevent the Properties being occupied continuously throughout the year provided of course that the occupiers changed over the course of time and subject to the 4-week maximum stay restriction.

- ❖ Holiday use properties fall into the same Use Class (C3) as permanent dwellings.

3.11 It is the case though that the occupation had to be for the purposes of holiday accommodation to comply with the condition attached to the original planning permissions. However, there would be no difference in terms of the way in which the actual use operates as between a dwelling house and a holiday unit aside from the changing nature of the occupiers. The two uses would manifest themselves in the same way in the sense of people travelling to and from the property, staying overnight, eating at the property, enjoying leisure time at the property and enjoying the outside facilities.

3.12 Indeed, use of a property as a self-catering "holiday home" falls within the same use class as a dwelling house i.e. Class C3. There is simply no change of use; the original permissions were for residential use limited only by occupancy conditions. The fact that they have removed the conditions on the original planning permission only serves to underline that position.

The use of the associated gardens, including parking, as domestic curtilage for each property.

3.13 Planning permission (SMD/2018/0375) was granted in 2018 for "*The retention of the garden serving two holiday cottages and the sub-division of the land to form two gardens to serve the two cottages".* The two cottages in question are the Barn and the Dairy. Although the two cottages were not named in the description it is plain in the application which are the pertinent buildings.

3.14 Planning permission (SMD/2018/0404) was granted in 2018 for "*The retention of the garden serving Granary Cottage".*

3.15 It is clear in both permissions that the gardens are to serve the buildings and which gardens serve which cottages.

6 CONCLUSION

6.1 The 2018 permissions remove holiday occupancy conditions from all three properties and there are now no restrictions as to the length of time the buildings can be occupied and the fact that they are in the same use class as permanent dwellings no material change of use would occur. Specific gardens and parking (domestic curtilage) have been approved for each building.
